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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 302

ANTHONY J. PARISSI, PETITIONER,

vs.

TELECHRON, INC., AND GENERAL ELECTRIC COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1954

CERTIORARI GRANTED OCTOBER 25, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 302

ANTHONY J. PARISSI, PETITIONER,

vs.

TELECHRON, INC., AND GENERAL ELECTRIC COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Civil 3831

TELECHRON, INC. AND GENERAL ELECTRIC COMPANY,
Plaintiffs,

v.

ANTHONY J. PARISSI, Defendant

For Plaintiff: Whalen, McNamee, Creble and Nichols, Esqs., 75 State St., Albany, N. Y.

For Defendant: Andros and Smith, 90 State St., Albany, N. Y.

[fol. 2] DOCKET ENTRIES

1954

Apr. 22 Filed and entered Judgment in favor of Plaintiffs and that Plaintiffs recover from Defendant their costs in this action, etc.

May 25 Filed Notice of Appeal and Bond (Date of filing changed to May 21, 1954).

May 25 Mailed copy of Notice of Appeal to Whalen, McNamee, Creble and Nichols, Attys for Plaintiff, 75 State St., Albany, N. Y.

May 28 Filed Affidavit and Order and entered Order changing date of filing of Notice of Appeal to May 21, 1954.

June 3 Filed Request to Clerk to Certify and Transmit Partial Record.

[fol. 2a] In United States Court of Appeals for the Second Circuit

Telechron, Inc. and General Electric Company,
Plaintiffs-Appellees,

v.

Anthony J. Parissi, Defendant-Appellant

I, A. Daniel Fusaro, Clerk of the United States Court of Appeals for the Second Circuit, do hereby certify that the attached was included in a memorandum in support of appellees' motion to dismiss the appeal herein submitted to the court by counsel for the appellees on the argument of said motion in this court.

A. Daniel Fusaro, Clerk. (Seal.)

Dated: September 17, 1954.

[fol. 2b] United States of America

District Court Clerk's Office,
Northern District of New York:

I, G. A. Porter, Clerk of the District Court of the United States for the Northern District of New York, do hereby certify that I have compared the annexed copy of Judgment—Telechron, Inc. and General Electric Company against Anthony J. Parissi Civil 3831 with the original now on file in this office; that the same is a correct transcript therefrom and of the whole of said original.

In Testimony Whereof, I have caused the seal of the said Court to be affixed at the City of Utica, in said District, this 22nd day of April, A. D. 1954.

G. A. Porter, Clerk.

[fol. 2c] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

Civil Action No. 3831

TELECHRON, INC. AND GENERAL ELECTRIC COMPANY,
Plaintiffs,

v.

ANTHONY J. PARISSI, Defendant

JUDGMENT—April 21, 1954

This action having been tried before the Court, and the evidence and briefs having been considered, and the Court on April 12, 1954 having rendered its opinion and made findings of fact and conclusions of law, it is hereby

Ordered, Adjudged and Decreed:

1. That defendant is the owner of patents 2,444,748 and 2,512,775, and reissue patent 23,261.

2. That each of claims 7, 11, 16, 19 and 20 of patent 2,444,748 is invalid and void.

3. That each of claims 7, 11, 16 and 19-27 of reissue patent 23,261 is invalid and void.

4. That each of claims 10 and 11 of patent 2,512,775 is invalid and void.

5. That no subject matter disclosed in patent 2,444,748, patent 2,512,775 or reissue patent 23,261, or any related subject matter, was ever disclosed to either plaintiff in confidence or subject to an understanding, express or implied, that compensation would be paid to defendant therefor by either plaintiff.

6. That all flashing light alarm clocks, switch alarm clocks, electric clocks having a time controlled switch, [fol. 2d] radio alarm clocks, and radio receivers embodying or controlled by clocks, and all components thereof, manufactured and/or sold by each plaintiff were developed independently of any disclosure to either plaintiff by defendant.

7. That defendant has no rights in or based upon any subject matter disclosed in patent 2,444,748, patent 2,512,775 or reissue patent 23,261, or in or based upon ary re-

lated subject matter, whether those rights be said to arise under the patent laws, from a contract or understanding, express or implied in fact or in law, confidential disclosure, or otherwise, which have been violated by either plaintiff by the manufacture, use or sale of flashing light alarm clocks, switch alarm clocks, electric clocks having a time controlled switch, radio alarm clocks, radio receivers embodying or controlled by clocks, or any component of any of them, or otherwise.

8. That defendant's first and second counterclaims are hereby dismissed.

9. That defendant, his agents, servants, employees, attorneys and assigns, be and they hereby are enjoined from bringing any suit against either plaintiff, or any licensee of either plaintiff, or any purchaser or user of flashing light alarm clocks, switch alarm clocks, electric clocks having a time controlled switch, radio alarm clocks, or radio receivers embodying or controlled by clocks, or any components of any of them, manufactured or sold by either plaintiff or by any licensee of either plaintiff, (1) charging infringement of claims 7, 11, 16, 19 or 20 of patent 2,444,748, claims 7, 11, 16, 19-27 of reissue patent 23,261, or claim 10 or 11 of patent 2,512,775, or (2) charging that any other right of defendant in or based upon any subject mat-[fol. 2e] ter disclosed in any of these patents, or in or based upon any related subject matter, has been violated by either plaintiff, or by any licensee of either plaintiff, in any way, or by such purchaser or user by its possession, use or sale of any such clock, radio clock combination, or any component of any of them.

10. That plaintiffs recover from defendant their costs in this action, to be taxed by the Clerk of this Court and made part of this judgment.

James T. Foley, United States District Judge.

Albany, New York, April 21, 1954.

[fol. 2f] AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
County of Albany, ss:

Bertha Ulma, being duly sworn, deposes and says that she is over twenty-one years of age, and that on the 23rd day of April, 1954, at the Post Office in the City of Albany, New York, deponent deposited a copy of a Judgment, whereof the foregoing is a copy, properly enclosed in a post-paid wrapper, directed to Andros & Smith, Esqs., 90 State Street, Albany, New York, that being the address designated by them as attorneys for the defendant herein for such purposes.

Bertha Ulma.

Subscribed and sworn to before me this 23rd day of April, 1954. E. Mae Kingston, Notary Public, State of New York, Residing in Albany county, Albany County Clerk's No. 402. My commission expires March 30, 1955.

[fols. 2g-2h-5] [Endorsed:] Copy. Civil 3831, United States District Court, Northern District of New York. Civil Action No. 3831. Telechron, Inc. and General Electric Company, Plaintiffs, against Anthony J. Parissi, Defendant. Judgment. Whalen, McNamee, Creble & Nichols, Attorney for Plaintiffs, Office and Post-Office Address, 75 State Street, Albany, N.Y. Orig. filed Apr. 22, 1954, G. A. Porter, Clerk.

NOTICE OF ENTRY OF JUDGMENT

To: Andros & Smith, Esqs., Attorneys for Defendant.

SIRS:

Take Notice, that in the within entitled action, a Judgment whereof the within is a copy, herewith served upon you has been this day duly entered in the office of the Clerk

of the United States District Court for the Northern District of New York at Utica, New York.

Yours, &c., Whalen, McNamee, Creble & Nichols, Attorneys for the Plaintiffs, Office & Post Office Address, 75 State Street, Albany, New York.

Dated: April 22, 1954.

[fol. 6] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

Notice is hereby given that defendant, Anthony J. Parissi, hereby appeals to the United States Court of Appeals for the Second Circuit, from all parts of the Final Judgment entered in this action on April 22, 1954.

Andros and Smith, By Harry A. Smith, Attorneys for Defendant, 90 State Street, Albany, New York.

Dated: May 20, 1954.

To: Whalen, McNamee, Creble and Nichols, 75 State Street, Albany, New York.

[fols. 7-8] Bond on appeal for $250.00 omitted in printing.

[fol. 8a] [Endorsed:] Civil #3831 Telechron, Inc., and General Electric Company, Plaintiffs, v. Anthony J. Parissi, Defendant. Notice of Appeal and Bond. Original filed May 25, 1954. T. A. Santer, Clerk.

Changed to May 21, 1954 by order of May 28, 1954.

[fol. 9] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER NUNC PRO TUNC—May 27, 1954

On the annexed affidavit of Harry A. Smith, of counsel for defendant, it is hereby ordered that the Notice of Appeal in this action (from the judgment entered on April 22, 1954) received by the Clerk of the District Court on May 21, 1954, be accorded a filing date as of the day it was received, namely, May 21, 1954.

(S.) James T. Foley, United States District Judge.

Dated: May 27, 1954, Albany, N. Y.

[fol. 10] IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF NEW YORK

[Title omitted]

STATE OF NEW YORK,
County of Albany, ss:

AFFIDAVIT

Harry A. Smith, being first duly sworn, deposes and says:

That he is a member of the firm of Andros and Smith, of counsel for Anthony J. Parissi, defendant, in the above entitled action.

That on April 22nd, 1954, a judgment was entered in the District Court in favor of plaintiffs herein and from which defendant decided to appeal in accordance with Rule 73 of the Federal Rules of Civil Procedure which apparently allows thirty (30) days from the entry of judgment.

That on May 20th, 1954, he prepared a proper Notice of Appeal and, with an appeal bond in the sum of $250.00 as required attached thereto, sent the same to the Clerk's Office in Utica, by registered mail, and the same was received [fol. 11] by the Clerk the following day, namely, May 21st, one day before the expiration of the appeal date. However,

your deponent inadvertently failed to enclose a check for $5.00 as a filing fee. On that day, May 21st, which was on Friday, the Clerk wrote a letter addressed to deponent stating that he would not file the Notice of Appeal until a check for $5.00 was received. Deponent did not receive this letter until Monday, May 24th, and immediately sent such check by return mail. The clerk was also immediately notified by telephone and his instructions were to refer the same to the Judge of this Court.

That deponent, on the day the Notice of Appeal was sent by registered mail to the Clerk's Office, namely May 20th, 1954, had already notified counsel for plaintiffs that a Notice of Appeal was sent to the Clerk and arranged for a conference in New York City to determine whether a stipulation as to the contents of the record to be printed could be agreed upon.

That unless the Court orders that the Clerk now file the Notice of Appeal as of the time it was received by registered mail, namely, May 21st, 1954, it is feared that defendant may be foreclosed from proceeding with his appeal.

That, therefore, an order in effect permitting filing the Notice of Appeal nunc pro tunc is being submitted herewith.

Respectfully submitted, Harry A. Smith.

Subscribed and sworn to before me this 25th day of May, 1954. Carolyn D. Flinn, Notary Public. (L.S.)

[fol. 11a] [File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

Copy

May 21, 1954.

Messrs. Andros & Smith, 90 State St., Albany, N. Y.
Attention: Harry A. Smith, Esq.

DEAR SIR:

Re: Telechron and General Electric vs. Parissi, Civil 3831

Receipt is acknowledged of your letter of the 20th inst. inclosing in duplicate Notice of Appeal and Bond on Appeal in the above action.

I am obliged to withhold the filing, awaiting receipt of the statutory filing fee of $5.00. When this is received, I will send a copy of the notice of appeal to the opposing counsel.

Yours very truly, G. A. Porter, Clerk.

GP:AD.

[fols. 13-15] IN UNITED STATES DISTRICT COURT

Copy

Law Offices of Andros and Smith, 90 State Street
Albany, N. Y.

Charles H. Andros, Harry A. Smith.

May 24, 1954.

Hon. G. A. Porter, Clerk of U. S. District Court,
Utica, New York.

Re: Telechron and General Electric vs. Parissi—Civil Action No. 3831

DEAR SIR:

Enclosed is a check for $5.00 for the filing fee which we inadvertently failed to enclose with our Notice of Appeal in the above case.

Very truly yours, Andros & Smith, Harry A. Smith, P.W.B.

HAS:pwb.

Encl.

[fols. 16-17] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 18-20] In United States Court of Appeals for the Second Circuit

[Title omitted]

Motion to Dismiss—Filed June 10, 1954

Appellees move this Court to dismiss this appeal on the ground of lack of jurisdiction because the notice of appeal was not filed within 30 days from the entry of the judgment appealed from, as required by law.

Whalen, McNamee, Creble & Nichols, By Charles E. Nichols, Member of Firm, 75 State Street, Albany 1, New York, Attorneys for Appellees.

Of Counsel: Charles H. Walker, Fish, Richardson & Neave, 20 Exchange Place, New York 5, New York.

Dated: June 3, 1954.

[fol. 21] [File endorsement omitted.]

Appeal dismissed. H.B.C., J.N.F., C.C.H., U.S.C.J.J.

June 10, 1954.

[fols. 22-25] In United States Court of Appeals, Second Circuit

Present: Hon. Harrie B. Chase, Chief Judge, Hon. Jerome N. Frank, Hon. Carroll C. Hincks, Circuit Judges.

Telechron, Inc. and General Electric Company,
Plaintiffs-Appellees,

v.

Anthony J. Parissi, Defendant-Appellant

Judgment—Filed June 10, 1954

A motion having been made herein by counsel for the appellees to dismiss the appeal for lack of jurisdiction,

Upon consideration thereof, it is ordered that said appeal be and it hereby is dismissed. Further ordered that a mandate issue accordingly.

A. Daniel Fusaro, Clerk.

[fol. 26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27] Supreme Court of the United States, October Term, 1954

No. 302

[Title omitted]

Order Allowing Certiorari—Filed October 25, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.